

TERMS AND CONDITIONS OF PURCHASING DEUTSCHE VORTEX GMBH & CO. KG



1. APPLICABILITY

1.1 Our Terms and Conditions of Purchase apply exclusively. We do not accept supplier's general business terms and conditions conflicting with or deviating from our Terms and Conditions of Purchase. The suppliers' or any third parties' Terms and Conditions of Purchase shall not apply even if we fail to object to these in each particular case. Even if we refer to a letter that contains the supplier's terms and conditions or those of a third party or refers to such, this shall not be construed to be any agreement to the applicability of those conditions. Our Terms and Conditions of Purchase apply to all business transactions with the supplier also for all future transactions and also if they have not been explicitly agreed to again. Neither any failure to object nor any payment or acceptance of the goods shall be construed to be any acknowledgement of external Terms and Conditions.

1.2 In addition to the Terms and Conditions of Purchase, the Vortex plant standards (Werksnorm) and Vortex Packing Regulations (Vortex Verpackungsvorschrift) shall also be in effect.

2. QUOTATIONS, ORDERS, CALL-OFFS

2.1 Supplier's quotations shall be at no cost to Vortex; this shall apply also to cost estimates, design planning or other documentation on offered goods, which are made available to Vortex in context with supplier's quotation or in any other context. Vortex will explicitly be made aware in the quotation of any deviations between a Vortex inquiry and the quotation.

2.2 Vortex orders must be placed in written form. For the purposes of this section, written form shall also encompass orders placed by way of automated features without signature and designated name. In the event of any obvious errors, misspellings or mathematical errors in the order, Vortex shall not be bound to these. The supplier shall be obligated to immediately review the order in terms of any visible and obvious contradictions, errors, ambiguities, gaps as well as unsuitability of the specifications selected by Vortex for the intended use and to notify Vortex immediately about any required modifications or clarifications of the order details.

2.3 The supplier will immediately, however no later than three workdays after receipt of the order, send a confirmation of order explicitly specifying price, quantity and delivery schedule. In the event of any deviations or changes to contract, these shall be considered agreed only if Vortex has explicitly confirmed these in writing.

2.4 Call-offs by Vortex under series delivery contracts must not be confirmed by supplier. Call-offs by Vortex shall be considered accepted if the supplier fails to object immediately, however no later than five workdays after receipt.

2.5 If Vortex becomes aware of facts which put at doubt supplier's performance capability, Vortex prior to further fulfillment of its payment obligations or any other obligations shall be entitled to insist upon complete fulfillment of supplier's obligations or to request supplier to provide appropriate surety within a reasonable set period.

If such deadline expires inefficaciously, Vortex shall be entitled to cancel the contract provided that Vortex has previously notified supplier of

these legal consequences. Such notification may be made in conjunction with the request for complete fulfillment of supplier's obligations or for providing appropriate surety. If Vortex in the event supplier has already provided partial fulfillment of his obligations is not interested in only partial fulfillment of obligations, Vortex in the aforesaid case and under the aforesaid conditions is entitled to cancel the entire agreement.

2.6 Any excess delivery by supplier will not lead to any tacit modification of contract. Any excess delivery will not be separately paid; the supplier at any time may request return of such excess delivery at his own expense. Upon request by Vortex, the supplier shall be obligated to retrieve excess deliveries at any time. The supplier will compensate Vortex for any storage and maintenance costs incurred in this context. If the delivery constitutes a commercial transaction for the supplier and if the supplier is in delay with retrieving the excess delivery, Vortex at its own discretion may utilize it in accordance with § 373 HGB [German commercial code].

3. DELIVERY DATES AND PERIODS, DELAY IN DELIVERY

3.1 Agreed delivery periods or delivery dates and the place of delivery stated in the order shall be binding. If delivery periods or dates have explicitly not been agreed, the delivery periods or dates stated in the Vortex order shall be binding unless the supplier immediately objects to these, however no later than three workdays after receipt. Delivery periods shall commence at the order date. The goods must have been received at the receipt destination defined by Vortex within the delivery period and/or up to the delivery date. Vortex shall not be obligated to accept the ordered goods prior to expiry of the delivery date and/or prior to the delivery date. The supplier will immediately notify Vortex in writing as soon as supplier becomes aware of any actual delays or delays to be anticipated.

3.2 In the event of any supplier delays in delivery, Vortex is entitled to request payment by supplier of a flat-rate arrears penalty in amount of 0.1 % of the delivery value per day, at the most 5% of the delivery value. The supplier is entitled to demonstrate that Vortex incurred lesser damage or no damage at all. Vortex is entitled to assert claims for damages from delay extending beyond the flat-rate arrears penalty.

4. DELIVERY, PASSAGE OF RISK, PACKAGING, CERTIFICATE OF ORIGIN

4.1 Delivery will be made at the supplier's cost and without any expenses to the point of delivery stated by Vortex. If Vortex as an exception must bear freight costs, the supplier will choose the transport mode stated by Vortex; in other case the transport mode most favorable to Vortex.

4.2 In performing delivery, the particular Vortex requirements will be observed. The supplier is also obligated to act in compliance with Vortex's general packaging guidelines. Packaging of the goods to be delivered is included in the agreed price, unless a specific different agreement has been fixed in writing. If Vortex based upon written agreement must bear the packaging costs, such packaging will be invoiced at cost.

4.3 The supplier shall be entitled to make partial delivery only with prior written approval by Vortex.

If partial deliveries are made without approval by Vortex, the supplier will bear the additional costs incurred by Vortex for Incoming procedures, inspection, and storage with a flat-rate charge of €75.00 per additional delivery. The supplier is entitled to demonstrate that Vortex did not incur any additional costs or lesser additional costs.

4.4 Risk passes to Vortex at the time the delivered goods are accepted by Vortex at the point of delivery. If dispatch of goods has been agreed, the risk will pass to Vortex only after the goods are transferred to Vortex at the agreed destination. If the supplier is responsible for assembly or installation, the risk will pass to Vortex at the time Vortex formally accepts the delivery and work performance.

4.5 The goods manufactured by the supplier for Vortex might be used by Vortex for export. In consideration of this circumstance, the supplier is obligated to provide Vortex with a written customs-law certificate of origin and to use the formsheet provided by Vortex for that purpose. This certificate will be sent to Vortex no later than one week following delivery. In the event of any changes of origin or establishment of origin of new products, Vortex will promptly and without any further request be notified of such fact in a formsheet and/or a supplier declaration for goods featuring the Vortex item code.

5. REQUIREMENTS ON DELIVERY ITEM, WARRANTY

5.1 The delivery item will be provided as customary in the trade in compliance with Vortex's written purchase orders and the applicable DIN norms and the applicable European standards in the respectively valid versions. Supplier's drawings and depictions, dimension and weight specifications or any other performance data communicated by supplier as well as the quality requirements stated in Vortex's purchase order, to which the supplier failed to object, constitute quality agreements within the meaning of § 434 sec. 1 sent. 1 BGB [German civil code].

5.2 The supplier will act in compliance with statutory and occupational-insurance accident prevention guidelines. The supplier will make appropriate arrangements at his own expense. The supplier assures that the goods are in compliance with the safety-related regulations in effect in Germany at the time of delivery.

If the delivery item is a technical appliance within the meaning of the Equipment Safety Act [Gerätesicherheitsgesetz], the supplier assures to act in compliance with the regulations of this Equipment Safety Act. Upon request by Vortex, the supplier is required to provide evidence for compliance with the Equipment Safety Act by submitting test certificates, type test certificates, etc.

5.3 The supplier assures that he will conduct extensive function tests and quality inspections prior to delivery. He also assures that the delivery item does not feature any defects impairing its value or functionality, that it meets state-of-the-art standards and pertinent legal regulations as well as regulatory requirements, occupational-insurance and trade association guidelines. The supplier also assures that the delivery item has the agreed and guaranteed qualities, that it is suited for the intent and use stated in the contract, that it is in compliance with the applicable safety-related requirements as well as occupational

accident-prevention regulations. If the supplier provides a guarantee for the delivery item's qualities or durability, Vortex in addition may also assert claims based upon the guarantee.

5.4 The supplier will be liable to Vortex in compliance with legal regulations and the following stipulations:

5.4.1 If individual samples of a shipment are defective, Vortex may assert claims to compensation for damages for the entire shipment and/or may withdraw from the contract

5.4.2 If the supplier fails to comply with his obligation to provide supplementary performance within an appropriate cure period set by Vortex, Vortex shall be entitled to remedy the defect itself or to have it remedied by a third party at the supplier's expense. Irrespective of any other Vortex claims, Vortex with approval by the supplier may immediately remedy the defect itself or have it remedied by a third party at the supplier's expense. In the event of minor defects (costs up to 10% of the order value) and in the event of impending risks to operational integrity or to avert potentially excessive subsequent damages to Vortex or to third parties, Vortex shall be entitled to remedy the defect itself or to have it remedied by a third party at the supplier's expense also without supplier's consent. In such case, the supplier will be immediately notified.

5.4.3 The period of limitations for Vortex's guarantee claims shall be 36 months from the day the end device is delivered to the end user. The guarantee period in any case shall end no later than 48 months after delivery of the delivery item to Vortex or, in the event of the aforesaid section 4.4 sentence 3, after formal acceptance by Vortex of the delivery and work performance.

5.5 If a delivery has defects and Vortex issues a deviation permit, the supplier will compensate Vortex for any costs incurred in this context. The flat-rate obligation to compensate costs is agreed to be 1 % of the invoice value of the defective delivery, with a minimum of €50.00 net and a maximum of €500.00 net.

5.6 Vortex shall be considered to be in fulfillment of its obligation to give notice of defect in compliance with § 377 HGB [German commercial code] if Vortex reports visible defects to supplier within 10 days after delivery and concealed defects within 10 days after their discovery. Acceptance of goods and processing, payment, and subsequent ordering of items not detected and reported as defective may not be construed to be approval of the delivery or any waiver of claims for defects.

5.7 The supplier is obligated to keep Vortex indemnified against third-party claims based on product liability if and to the extent supplier under liability-law principles is responsible for the product defect and the ensuing damage. In the scope of such obligation, the supplier is also obligated to compensate Vortex for any expenditures arising from or in context with any recall campaign conducted by Vortex. Any further statutory Vortex claims shall not be affected.

5.8 Acceptance or approval of samples or templates may not be construed to be a waiver of Vortex to assert guarantee claims.

5.9 The period of limitation for warranty claims shall be suspended at the time the supplier receives written notification of defects by Vortex. In the event of replacement delivery and correction

of defects, the guarantee period shall begin anew for replaced or repaired parts unless Vortex based upon supplier conduct had to assume that the supplier did not consider himself under any obligation to take such action but instead made the replacement delivery or correction of defect merely as a gesture of goodwill.

5.10 The supplier shall also be liable for infringement of intellectual property rights resulting from contractual use of the delivered items. If and to the extent a third party asserts claims against Vortex based on alleged infringement of intellectual property rights or based on infringement of title retention rights or other rights in rem to the delivery item, the supplier is obligated to comprehensively release Vortex from third-party claims upon first request.

6. PRICES, PAYMENTS, TRANSFER OF OWNERSHIP

6.1 The net weights or quantities determined by Vortex at Incoming inspections shall be decisive for invoicing purchase orders.

6.2 Payments will be made at the payment terms agreed with the supplier after complete receipt of delivery items or complete provision of work performance and after receipt of the invoice.

Any payment shall not be considered to constitute acceptance of terms and conditions or prices. The time such payment is made shall not have any impact on the supplier's guarantee and the right to make complaint.

6.3 In the event of any defects in delivery, Vortex up to the time of subsequent performance by the supplier is entitled to retain threefold the costs incurred by Vortex by way of substitute subsequent performance. Vortex is also entitled to offset supplier's price claims against all Vortex counterclaims against the supplier from the business relationship with the supplier.

6.4 The goods will pass into Vortex possession at the latest at payment of the supplier's invoice and/or fulfillment of supplier's invoice by offsetting with counterclaims.

7. ASSIGNMENT, OFFSETTING, RIGHTS OF RETENTION AND SUPPLIER'S CLAIMS TO COMPENSATION FOR DAMAGES

7.1 The supplier is entitled to assign his accounts receivable from the business relationship with Vortex only with prior written approval by Vortex.

7.2 The supplier is entitled to offset against counterclaims or to assert rights of retention only if counterclaims have been legally established or acknowledged by Vortex.

7.3 Supplier claims against Vortex to compensation for damages – irrespective of the legal reason – are excluded for damages caused by slight negligence. The exclusion of liability shall not apply to claims to compensation for damages based on violation of essential contractual obligations by Vortex. Such exclusion of liability shall also not apply to cases of injury to life and limb. In cases of slightly negligent violation of essential contractual obligations and in the event of gross negligence by persons employed in performing an obligation, the compensation for damages shall be restricted to replacement of the typical damage foreseeable at the time the contract was concluded.

8. OWNERSHIP OF PARTS PROVIDED OR PROCESSED BY VORTEX

8.1 Vortex retains ownership to all parts Vortex makes available to supplier ("provided parts"). Processing or conversion of parts by supplier will be done on behalf of Vortex. If the goods subject to retention of title are mingled with other parts not belonging to Vortex, Vortex acquires co-ownership in the new items in proportion of the value of Vortex items (purchase price plus VAT) to the value of the other processed items at the time of manufacture.

8.2 If the items provided by Vortex are blended with other objects not belonging to Vortex, Vortex shall acquire joint title to the new object in the ratio of the value of the item of title retention to the value of the other processed objects at the time of the processing. If the blending is such that supplier's object is to be regarded as the main object, it shall be deemed agreed that supplier transfers joint title to Vortex pro rata and that buyer shall safeguard the ensuing sole or joint title on Vortex's behalf.

8.3 Vortex retains ownership to samples, models, drawings, master prints, technical instructions, manufacturing equipment, tools, etc. (hereinafter named "Vortex items"). The supplier is obligated to use Vortex items exclusively for manufacturing the items ordered by Vortex and to refrain from making these available to third parties or using these for fulfilling orders by third parties. The supplier is also at his own expense obligated to insure the Vortex items at replacement value against fire and water damages as well as theft. The supplier hereby assigns to Vortex all claims to compensation from these insurances; Vortex hereby accepts such assignment. The supplier is in addition obligated to conduct any required maintenance and inspection work and to have all maintenance and repair work done in due time and at own expense. The supplier will promptly notify Vortex of any malfunctioning.

8.4 The supplier is obligated to conduct Incoming inspection of all provided parts. This encompasses identity and quantity verification. Any deviations will immediately be communicated. The supplier at the end of each quarter will make an inventory of provided parts and will immediately notify Vortex about any deviation from quantity of actually delivered provided parts. If the determined deviation exceeds any agreed scrap quota, the supplier is obligated to refund the costs for the missing provided parts by remitting such determined sum to Vortex within one month of such determination.

8.5 Supplier's tools, models, samples etc. pass to Vortex's ownership as soon as and to the extent these are paid by Vortex. From that time, they are stored by supplier for Vortex at supplier's expense. Pertinent payments will become due if so agreed and only after Vortex has conducted sampling and has issued a written technical release.

8.6 The supplier is obligated to keep in strict confidence all samples and manufacturing equipment as well as all documentation and information made available to him by Vortex. These may be disclosed to third parties only with explicit and written prior approval by Vortex. The confidentiality obligation shall apply also after expiration of the contract. It lapses only if and to the extent the manufacturing expertise gained from the depictions, drawings, calculations and other documentation is in the general domain. Any documentation on construction or manufacture of Vortex products, which Vortex made available to

the supplier at the contract negotiations, which were not brought to successful conclusion, will immediately be returned to Vortex after such negotiations have been terminated. The supplier in such case will also maintain strict confidentiality about any know-how on engineering or manufacture of Vortex products of which he became aware in context with the purchasing negotiations.

9. BRAND PROTECTION

9.1 Any goods which the supplier partially or entirely manufactures on the basis of Vortex specifications, may be delivered to third parties only with prior written approval by Vortex. This applies also to goods which Vortex justifiably declined to accept from supplier.

9.2 In the event of any infringement of the supplier's obligations stated in the above section 9.1, Vortex shall be entitled to withdraw from all purchase orders not yet delivered. This shall not constitute any supplier entitlements to claims to compensation for damages and/or contractual penalties. The supplier in such case is obligated to pay to Vortex a contractual penalty in amount of 25% of the net invoice value the third party paid for the items delivered in contradiction to the obligations stated in the above section 9.1. Any further Vortex entitlements to compensation for damages shall not be affected.

9.3 The supplier in context with the agreements with Vortex will not acquire any rights to the brands/trademarks under which Vortex sells the products manufactured by the supplier. If the supplier acquires rights to such brands, he is obligated to immediately assign all such rights to Vortex. The supplier agrees to refrain from registering any brands under which Vortex sells the products manufactured or delivered by the supplier as his own brands or to cause anybody else to register these brands.

9.4 If the supplier in context with Vortex's purchase orders gains any improvements, Vortex has a gratuitous non-exclusive utilization right to commercially exploit the improvement and any intellectual property rights.

9.5 The supplier shall be liable to assure that delivery and use of the delivery items is not in violation of third-party patents, licenses or intellectual property rights. The supplier will bear any due license fees.

10. THIRD-PARTY RIGHTS

The supplier is responsible for assuring that third-party rights are not infringed by his deliveries. In this context, Vortex points out that Vortex products are sold throughout the entire world. If claims are asserted against Vortex by a third party due to violation of that third party's rights, the supplier shall be obligated to indemnify Vortex from these claims. The obligation to indemnify relates to all expenditures Vortex necessarily incurs in context with claims being asserted by a third party.

11. WITHDRAWAL AND TERMINATION

Vortex for significant cause may terminate the contractual relationship or withdraw from the contract. Such significant cause for the purposes of this contract in particular may be if the supplier has sworn an oath of disclosure, if compulsory enforcement measures have been taken against the supplier's assets and such measures have not been ceased within four weeks, if a justified application has been made for instigation of insolvency proceedings against the supplier's assets or if insolvency proceedings have been instigated or have been declined for lack of assets.

12. FORCE MAJEURE

Force majeure, labor disputes, operational disruptions beyond Vortex's control, civil disturbances, official measures as well as other unavoidable events beyond Vortex's sphere of influence entitle Vortex – irrespective of any other rights – to withdraw entirely or partially from the contract, provided these events are of more than minimal duration and consequently lead to a considerable decrease of Vortex's needs.

13. COMPLIANCE

The supplier agrees to act in accordance with all applicable statutory regulations as pertains to employees, on-the-job safety and environmental protection. The supplier agrees, to the extent possible, to install a management system in compliance with DIN EN ISO 9001.

14. REACH-REGULATION / ROHS CONFORMITY

The supplier agrees and assures to act in compliance with all stipulations of the REACH directive EC 1907/2006. The supplier will immediately upon request make available to Vortex all required information in compliance with the REACH directive. Any infringement of conformity with the REACH directive constitutes a defect in the goods to be delivered. Vortex is entitled to refuse acceptance of goods without incurring costs of any kind. The supplier agrees to indemnify Vortex from any third-party claims in context with non-compliance with the REACH directive. The supplier agrees to act in compliance with the Restrictions of Hazardous Substance directive (RoHS) 2011/65/EC.

15. APPLICABLE LAW, PLACE OF FULFILLMENT, PLACE OF JURISDICTION

15.1 The laws of the Federal Republic of Germany shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

15.2 Vortex's legal domicile shall be place of fulfillment and place of jurisdiction for all disputes from or in context with these conditions for contracts with registered traders.

15.3 Any alterations to or modifications of agreements must be in writing to be legally effective. This shall apply also to the waiver of the requirement of written form.

15.4 If a clause of this agreement is or becomes entirely or partially legally ineffective or unfeasible, this shall not affect the validity of the remaining clauses. The parties will agree on a clause coming closest to what they had originally intended.

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